

**International Longshoremen's Association, Local  
3033, AFL-CIO and Coastal Cargo Company,  
Inc. Case 15-CD-302**

April 28, 1997

**DECISION AND DETERMINATION OF  
DISPUTE**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HIGGINS

A charge in this Section 10(k) proceeding was filed on June 12, 1996, and an amended charge was filed June 27, 1996, by Coastal Cargo Company, Inc. (Coastal or the Employer), and was served on International Longshoremen's Association, Local 3033, AFL-CIO (the Respondent), alleging that the Respondent had violated Section 8(b)(4)(i)(D) and (ii)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Teamsters Local No. 270, associated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Local 270). A hearing was held on July 24, 25, and 31, 1996, before Hearing Officer Stephen C. Bensinger. Thereafter, the Employer and Local 3033 filed briefs.<sup>1</sup>

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

The Employer, Coastal Cargo Company, Inc., a Louisiana corporation, with a principal office and place of business in New Orleans, Louisiana, operates a stevedoring and terminal operations company. During the year preceding the hearing, the Employer derived gross revenues in excess of \$50,000 for services performed in interstate commerce and purchased and received at its Louisiana location goods and materials valued in excess of \$50,000 directly from points outside the State of Louisiana. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Locals 3033 and 270 are labor organizations within the meaning of Section 2(5) of the Act.

<sup>1</sup> The Employer's brief was received 1 day after the filing deadline and was rejected as untimely. Thereafter, the Employer filed a motion under Sec. 102.111(c) of the Board's Rules and Regulations, seeking permission to file the brief beyond the designated deadline. Having considered the Employer's assertions that its noncompliance was inadvertent and because no prejudice will result from granting the Employer's unopposed motion, we find that the Employer has met the "excusable neglect" standard, and we accept the brief.

**II. THE DISPUTE**

**A. Background and Facts of Dispute**

The Employer provides stevedoring and warehousing services, primarily in the New Orleans, Louisiana metropolitan area. In 1994, the Employer obtained a license to perform stevedoring work at the port of Greater Baton Rouge, the next major port north of New Orleans. The Employer has recognized Teamsters Local 270 as the representative of its employees and there is currently in effect a collective-bargaining agreement covering those employees.

About May 30, 1996, Coastal's general manager, Edward Stettinius, telephoned Gary Pruitt, the executive director of the port of Greater Baton Rouge, to tell him that it had been awarded a contract to perform certain stevedoring work at the port by Intermarine, Inc. Coastal was hired to offload pipe being transported by Love Trucking Co. delivery trucks and then load that pipe onto the ship *Fastov*. The job was to begin on June 3, 1996, and was expected to last approximately 2 days.

Later that day, Pruitt visited Respondent Local 3033's office and told its president, John Tilton, and vice president, J. C. James, about Coastal's upcoming job. Pruitt testified that he wanted to notify Local 3033 about Coastal working a vessel at the port because he "never had a similar situation where anyone other than ILA worked on the cargo docks."

Tilton testified that upon hearing this news, he called ILA's district office to inform them about the Coastal job and ask for advice. He was counseled that he could establish a protest of the work, objecting to the payment of substandard wages. Tilton then oversaw the drafting of language for picket signs, some stating that Coastal paid substandard wages and benefits and others that Coastal was refusing to hire local labor.

On the morning of June 3, 1996, drivers of pipe-laden Love delivery trucks encountered delays en route to the port, created by two slow-moving pickup trucks acting as a kind of "rolling roadblock" on the interstate. Love Trucking Co. drivers testified that this produced an unsafe situation by causing them to travel at speeds as low as 15 to 20 miles per hour where normal, lawful speed rates are several times higher. These pickup trucks traveled to the front entrance of the port, the area where several Local 3033 picketers had gathered with their picket signs protesting the Coastal job. Not long thereafter, upon the arrival of law enforcement authorities, the drivers of the pickup trucks got into their vehicles and left the area.

As Love truckdrivers entered into the port area, picketers, some of whom were carrying the above-described signs, shouted at them and tried to stop them from delivering the pipe. A group of Local 3033 pick-

eters approached one driver and, after asking how much he would earn in a day delivering pipe, offered to pay him \$300 to park his trucks and not make the delivery. Local 3033 picketer Joseph McGee asked a Love Trucking driver for his help, explaining that scabs were trying to take their jobs and if the Love Trucking drivers did not deliver the pipe, then Coastal could not load it onto the ship.

When the port's director of security, James LeBlanc, arrived on the scene, he was cursed by the picketers, who described port officials as "no good dogs" for allowing Coastal into the port. As he drove from the warehouse area later that day, the tires on LeBlanc's car were damaged by roofing nails. Roofing nails were found scattered around the warehouse at the dock, as well as in the area where Coastal employees parked their cars.

At around noon on June 3, as Coastal employee Wellon Pierre was trying to return to the dock from the parking area, he was confronted by a group of Local 3033 picketers who tried to stop him from using a set of stairs which led directly to the dock area.<sup>2</sup> They shouted epithets at him, and picketer McGee told him not to use the "Union-made steps," but to take the long route to the dock. Only after the state police intervened was Pierre permitted to ascend the stairs to return to the work area. He was admonished not to attempt to use the steps again.

Coastal employee Bobby Ruhl was attempting to unload pipe with a large forklift when he encountered interference from four or five smaller forklifts. These empty lifts were being driven at high rates of speed, in exactly the area in which he was trying to transport the pipe. Ruhl testified that this created a dangerous situation and posed a serious hazard for all in the area. There appeared to be no work-related reason why these forklifts were in Ruhl's work area.

Coastal employees testified that in order to return to their cars at the end of the work day, they had to drive past the main picket area, where they were met with a large number of Local 3033 picketers milling about, yelling insults and jeers, and briefly blocking cars. While no one was prevented from departing the area, Coastal employee Smiley Felder was hit on his arm, which had been resting on the open window of the car door. One Local 3033 picketer, wielding an axe handle or large stick, was handcuffed and removed from the scene by the police.

The next day, because a repetition of the previous day's events appeared likely, only one Love truck de-

livered pipe to the port. Thus, only a small amount of pipe was loaded by Coastal employees. The cessation of deliveries completely disrupted the work. Having no work to do, Coastal employee Meyers went to the dock to get a soft drink. He was stopped from getting the drink by three Local 3033 members who cursed at him, held a stick in his face, asked him if he "liked crossing picket lines," and was told that this was "ILA's dock," that they worked "ten days out of the month" and that they wanted "their ten days." Representatives of Intermarine and Coastal met during the morning of June 4 and agreed that Coastal would pull out of the job and turn the remaining work over to Baton Rouge Marine Contractors (BRMC), a longtime employer at the port. Thus, the loading of the *Fastov* was completed by BRMC Local 3033-represented labor.

### B. Work in Dispute

The disputed work involves the offloading of pipe from delivery trucks and the loading of that pipe onto the *Fastov* by Coastal pursuant to a contract with Inter-marine, Inc. at the port of Greater Baton Rouge, located in Port Allen, Louisiana.

### C. Contentions of the Parties

The Employer contends that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated because, through various acts and conduct, Local 3033 interfered with and ultimately stopped the work from being accomplished by the employees to whom the work was assigned. The Employer cites, *inter alia*, Local 3033 picketers' entreaties to employees of Love Trucking Co., asking them to refrain from delivering the pipe that was to be offloaded by Coastal employees, the picketers' physical interference with employee Pierre in his attempt to use the stairs to reach the worksite, the dangerous situation created by the empty forklifts' harassing Ruhl while he was attempting to move the pipe, and the interference with the employees leaving the worksite on June 3, 1996. The Employer asserts that these incidents establish that Local 3033 was not merely protesting Coastal's failure to adhere to area standard wage and benefit rates or to use local labor, but rather was attempting to disrupt the performance of the work in order to have that work reassigned to employees it represents.

Local 3033 contends that no jurisdictional dispute exists and that the notice of hearing should be quashed because this case is outside the scope of Section 8(b)(4)(D) and Section 10(k). Local 3033 maintains that this case involves only its efforts at (1) preserving the stevedoring work historically performed by local employees at the port of Greater Baton Rouge, and (2) maintaining area standards. Local 3033 states that its picketing activity was designed merely to inform the

<sup>2</sup> The stairs had apparently been built and were customarily used by Local 3033 members to shorten the trip from the parking area to the port. While the stairs were not the only means of access to the dock, the alternative was to walk a substantial distance around the hill and back to the area immediately on the other end of the stairway.

local political establishment of the situation and to garner public support for keeping work at the port for the local workforce at established area standards. Local 3033 cites the absence of any direct or indirect demand for the work to any representative of Coastal as establishing that it was not seeking to have the work reassigned to employees it represents.

In addition, Local 3033 contends that the existence of a jurisdictional dispute here is suspect because there is no evidence that Local 270 ever affirmatively claimed the work at issue here. Local 3033 also notes that Local 270 was not initially served with the notice of hearing<sup>3</sup> and made no appearance at the hearing. Local 3033 contends that these circumstances suggest that Local 270 is not claiming the work.

#### D. Applicability of the Statute

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be established that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated, and that the parties have no agreed-upon method for voluntary adjustment of the dispute.

While the Employer was willing to stipulate that there is no agreed-upon method for the voluntary resolution of this dispute, Local 3033 said that it was without knowledge as to whether any such mechanism exists. Absent evidence to the contrary, we find that no agreed-upon voluntary dispute resolution mechanism exists.

In addition, we find that reasonable cause exists to believe that a violation of Section 8(b)(4)(D) has occurred. Even assuming that an object of the Respondent Local 3033's picketing was to protest the wage rates being paid by the Employer to Local 270-represented employees and the failure of the Employer to employ local labor, the evidence reasonably establishes that at least another object of the picketing was to force the Employer to assign the disputed work to employees represented by the Respondent. In making this finding, we rely upon statements made by Local 3033 picketers to Love Trucking employees who were attempting to deliver the pipe to the port and to Coastal employees who were attempting to perform the disputed work. These statements appear designed to dissuade them from carrying out that work.<sup>4</sup> Assertions

<sup>3</sup> Why Local 270 was not served initially is not clear; however, it was subsequently notified of the charge and the hearing. Local 270 made no appearance at the hearing and filed no brief in this proceeding.

<sup>4</sup> Corroborating other evidence that an object of Local 3033's activities was to force the reassignment of work from Local 270 are statements from Local 3033's president, Tilton, as quoted in a newspaper article entered into evidence at the hearing, concerning events at the port of Greater Baton Rouge on June 3, 1996. The article quotes Tilton as stating that for the "last 40 years, the ILA has had this work," that "work at the port traditionally goes to the ILA,"

that those individuals should not be performing the work because that was Local 3033's work, suggestions that they were taking away Local 3033's work, interference with employees' access to the worksite, and claims that the work properly belonged to Local 3033 all suggest that Local 3033 was claiming the work as its own and not merely protesting the failure to adhere to established area standards. Because "[o]ne proscribed object is sufficient to bring a union's conduct within the ambit of Section 8(b)(4)(D)," we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

We find no merit to Local 3033's contentions based on Local 270's failure to make an explicit demand for the work or to appear at the hearing. The fact that Local 270-represented employees were on the job and attempting to carry out the work is evidence of their claim to that work. *Longshoremen ILWU Local 14 (Sierra Pacific Industries)*, 314 NLRB 834 (1994). There is no evidence that Local 270 has since disclaimed the work. Moreover, a July 1996 letter from Local 270 President George Westley to the Employer's counsel confirms that Local 270 claims all stevedoring work at the port assigned by Coastal.

Accordingly, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. We deny the Respondent's motion to quash the notice of hearing and we find that the dispute is properly before the Board for determination.

#### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

##### 1. Collective-bargaining agreements

Coastal has a collective-bargaining agreement with Local 270 that covered all stevedore and terminal oper-

and that Local 3033 was showing its displeasure at outside companies "taking work away from our people." These statements reveal that Local 3033 was asserting a claim to the work at issue. The reporter who wrote the article testified as to the accuracy of the quoted statements.

<sup>5</sup> *Cement Masons Local 577 (Rocky Mountain Prestress)*, 233 NLRB 923, 924 (1977).

ation employees. It has no collective-bargaining agreement with Local 3033. This factor favors an award of the disputed work to employees represented by Local 270.

## 2. Company preference and past practices

Coastal prefers that the work in dispute be done by its employees who are represented by Local 270. The Employer has regularly assigned all stevedoring work to its Local 270-represented employees, including when the work has taken place outside the immediate New Orleans area. This factor favors awarding the disputed work to employees represented by Local 270.

## 3. Area practice

The record establishes that until Coastal appeared during June 1996 at the port of Greater Baton Rouge, stevedoring work has in the traditionally been done by employees represented by Local 3033. This factor favors awarding the work to employees represented by Local 3033.

## 4. Relative skills

Both employees represented by Locals 270 and 3033 possess the skills needed to load and unload ships. Both groups have experience in stevedoring ships. Therefore, this factor does not favor awarding the disputed work to either group of employees.

## 5. Economy and efficiency

Coastal's general manager, Stettinius, testified that the wage rates and flexibility permitted by the work rules set forth in the collective-bargaining agreement with Local 270 make it more economical and efficient for the Employer to use its own employees represented by Local 270 rather than employees represented by Local 3033. Thus, this factor favors awarding the disputed work to employees represented by Local 270.

## 6. Certifications

Neither Local 270 nor Local 3033 has been certified by the Board as the exclusive collective-bargaining

representative of the Employer's employees. This factor does not favor awarding the work in dispute to either group of employees.

## Conclusion

After considering all the relevant factors, we conclude that employees represented by Local 270 are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement between Coastal and Local 270, employer preference and past practice, and economy and efficiency.

In making this determination, we are awarding the work to employees represented by Teamsters Local 270, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, not to that Union or its members.

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Coastal Cargo Company, Inc., represented by Teamsters Local Union 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO are entitled to perform the offloading of pipe from delivery trucks and the loading of such product on the ship *Fastov* at the port of Greater Baton Rouge.

2. International Longshoremen's Association, Local 3033, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Coastal Cargo Company, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Longshoremen's Association, Local 3033, AFL-CIO shall notify the Regional Director for Region 15 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.